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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
NGUYEN, HOAN C				
ART UNIT		PAPER NUMBER		
2871				
NOTIFICATION DATE		DELIVERY MODE		
04/01/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MAKOTO YONEYA, JONG-HYUN KIM,
HIROSHI YOKOYAMA, and JUN YAMAMOTO

Application No. 10/070,908
Technology Center 2800

Mailed: March 31, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 28, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

SUPPLEMENTAL EXAMINER'S ANSWER

On April 1, 2008 and August 7, 2008, the Examiner mailed communications acknowledging receipt of Appellants' Reply Briefs, dated December 26, 2007 and May 30, 2008. In response to both Briefs the Examiner incorporated a Supplemental Examiner's Answer. A review under MPEP § 1208 the "Examiner's response to reply brief" reveals that the Examiner did not have grounds that would constitute submission of a Supplemental Examiner's Answer nor did he provide proper approval by the Technology Center Director or designee.

The Examiner's response to Reply Brief as set forth in MPEP § 1208, which states:

(1)After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2)A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b)If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

Corrective action is required.

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner's Acknowledgment to the Reply Briefs mailed December 26, 2007 and May 30, 2008;
- 2) proper acknowledgment of the Reply Briefs are required and/or appropriate consideration of the Reply Briefs dated December 26, 2007 and May 30, 2008;
- 3) acquiring approval for any Supplemental Examiner's Answer in response to the Reply Briefs mailed December 26, 2007 and May 30, 2008, if appropriate; and
- 4) for such further action as may be deemed appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MTV/lb

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